

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

VAN TOSHIA MOORE,

Plaintiff, : Case No. 3:09cv-111

-vs- : District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

DEPARTMENT OF VETERANS
AFFAIRS,

Defendant.

DECISION AND ORDER

This is an employment discrimination case against the Veterans Administration, Plaintiff's former employer. Upon initial review under 28 U.S.C. § 1915, the Magistrate Judge recommended dismissal for failure to exhaust administrative remedies (Report and Recommendations, Doc. No. 3). As part of her Objections (Doc. No. 4), Plaintiff filed her right to sue letter from the EEOC. The Magistrate Judge then filed a Substituted Report, recommending dismissal for untimely contact with an EEO counselor (Doc. No. 5).

Plaintiff has now filed Objections (Doc. No. 6) claiming union involvement and that the matter of racial discrimination is a grievable and arbitrable matter under the collective bargaining agreement. She makes allegations in the Objections which would support a claim under 29 U.S.C. § 301 in a private employment context.

Having read the most recent Objections, the Magistrate Judge is persuaded this matter should not be dealt with under § 1915, but rather requires involvement by counsel for the Veterans Administration.

It is accordingly ORDERED:

1. The Substituted Report and Recommendations (Doc. No. 5) is withdrawn.
2. Plaintiff's second set of Objections (Doc. No. 6) shall be treated as an amended complaint.
3. Provided Plaintiff prepares and furnishes to the Clerk the required summonses and Marshal 285 forms, the Clerk shall issue process and the United States Marshal shall serve the same.

May 2, 2009.

s/ **Michael R. Merz**

United States Magistrate Judge